88-1811

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

MICHAEL J. MAJOR - PETITIONER

vs.

PENNWELL PUBLISHING COMPANY - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. WHEN THE PARTNER OF A LARGE LAW FIRM OFFERS A BAD CHECK "IN GOOD FAITH" AS THE "COMPLETE SETTLEMENT" OF A CONTRACT DISPUTE, DOES THIS BAD CHECK CONSTITUTE GOOD FAITH OR BAD FAITH?

B. WHEN A PRO SE ATTEMPTS TO PRESENT THIS BAD CHECK AT A SMALL CLAIMS HEARING, DOES THIS PARTNER PLUS TWO OTHER LAWYERS HAVE THE RIGHT TO CONSPIRE WITH A SMALL CLAIMS JUDGE TO DENY THE PRO SE ANY POSSIBILITY FOR A HEARING OR APPEAL IN STATE COURT?

C. WHEN THE PRO SE ATTEMPTS TO PRESENT THE CONCRETE EVIDENCE OF THIS CONSPIRACY TO THE RELEVANT STATE COURTS AND SUBSE-QUENT FEDERAL COURTS, DO THESE SAME LAW-YERS AND VARIOUS PRESIDING JUDGES HAVE THE RIGHT TO COLLUDE IN SUPPRESSING THIS EVIDENCE, HARASSING THE PRO SE THROUGH AN

ONGOING DISRUPTION OF CIVIL PROCEDURE, AND DENYING HIM THE RIGHTFUL AWARDS WHICH WOULD FLOW FROM THE UNCOVERING OF THIS EVIDENCE IN OPEN COURT?

D. DOES A FEDERAL JUDGE, IN ADJUDICATING A CONTRACT DISPUTE, HAVE THE RIGHT TO TOTALLY DISREGARD THE CONTRACT AGREED TO AND SIGNED BY BOTH PARTIES, INSTEAD RELYING UPON A PREVIOUS CONTRACT WHICH WAS NEITHER ACCEPTED NOR SIGNED BY THE PRO SE, ALSO BASING HIS FINDINGS UPON HEARSAY, AFFIDAVITS REVEALED TO BE PERJURED AT THE TRIAL OVER WHICH HE PRESIDED, PLUS FABRICATIONS PRESENTED BY THE LAWYERS FOR WHICH THERE ARE NO DOCUMENTATION AND WHICH ARE IN DIRECT CONTRADICTION TO ALL OF THE EXISTING DOCUMENTATION?

E. DOES THIS FEDERAL JUDGE, IN RULING FOR THE PRO SE FOR A PORTION OF THIS CONTRACT DISPUTE, HAVE THE RIGHT TO THEN ARBITRARILY DENY HIM ALL OF THE AWARDS

FLOWING FROM HIS DECISION, WHEN THESE AWARDS ARE STIPULATED IN STATUTORY PROVISIONS FOR ATTORNEY FEES, THE EXPLICIT TERMS OF THE CONTRACT, PLUS ALL OF THE RELEVANT STATE AND FEDERAL LAWS REGARDING AWARDS STEMMING FROM A BAD FAITH BREACH AND BAD FAITH ACTIONS?

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Petitioner, Michael J. Major, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in the above entitled cause on March 10, 1989.

I.

OPINION BELOW

The order and judgment of the Court of Appeals is attached as Appendix A. The judgment of the district court for the Northern District of Oklahoma was issued on August 20, 1987 and is attached as Appendix B.

II.

JURISDICTION

The opinion of the Court of Appeals for the Tenth Circuit was filed on March 10, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. §1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV of the United States Constitution provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (emphasis added to pertinent section)

IV.

STATEMENT OF THE CASE

A. WHEN THE PARTNER OF A LARGE LAW FIRM OFFERS A BAD CHECK "IN GOOD FAITH" AS THE

"COMPLETE SETTLEMENT" OF A CONTRACT DISPUTE, DOES THIS BAD CHECK CONSTITUTE GOOD FAITH OR BAD FAITH?"

Petitioner-Plaintiff, Michael J. Major, ("Major"), is a writer living in Port Townsend, WA. Respondent-Defendant, PennWell Publishing Company ("PennWell"), is a publisher of trade magazines headquartered in Tulsa, OK. Major contracted with one of PennWell's magazines, Computer Graphics World ("CGW"), based in Littleton, MA, for six articles at $800 each plus normal expenses.

After Major had submitted the first of these articles, on the Boeing Company ("Boeing") and Marathon Oil ("Marathon"), the CGW editor, Tom McMillan ("McMillan"), wrote Major he intended to pay for and publish the Boeing article but was terminating the contract for the others. Since the contract does not allow for a unilateral termination, and since Major could not find anyone at CGW who would engage in a reasonable dialogue, he wrote CGW he would, if necessary, send

newsletters detailing the facts of the termination to the public, including PennWell's advertisers.

Robert F. Biolchini ("Biolchini"), a partner at PennWell's 40-member law firm, Doerner, Stuart, Saunders, Daniel & Anderson, wrote Major threatening a law suit unless he remained silent about the termination. Biolchini also urged Major to accept the check for the Boeing article, already sent, in lieu of of the nonpayment for the latter five articles, as a "jesture" of "good faith" and as the "complete settlement of this dispute". Biolchini thereupon ordered a stop payment on this check. No notice or explanation was given Major, who found out about the bounced check two weeks later only when the checks he had written to pay the rent and buy groceries for his family also began bouncing.

McMillan later admitted at trial that he confiscated Major's article and photos and published an article on Boeing with his

byline instead of Major's.

B. WHEN A PRO SE ATTEMPTS TO PRESENT THIS BAD CHECK AT A SMALL CLAIMS HEARING, DOES THIS PARTNER PLUS TWO OTHER LAWYERS HAVE THE RIGHT TO CONSPIRE WITH A SMALL CLAIMS JUDGE TO DENY THE PRO SE ANY POSSIBILITY FOR A HEARING OR APPEAL IN STATE COURT?

Two months later, after PennWell failed to respond to about a dozen of Major's negotiating letters, he mailed his newsletters which PennWell also ignored. After the PennWell lawyers sabotaged Major's two separate attempts for a Better Business Bureau arbitration, Major filed an affidavit in the Tulsa County Court for a small claims hearing, scheduled for 6/23/86. Major requested the $820.82 due for the Boeing article, $400 in travel expenses, and $279.17 in collection costs, for a total of $1,500.

As evidence, Major intended to bring the contract, with its stipulation that any payment was non-refundable, signed by the CGW editor, David Pope ("Pope"), the McMillan

letter in which he stated he would pay for and publish the article; Biolchini's "good faith" letter; and the expression of this "good faith", the bad check.

On 6/17/86 Biolchini filed a motion to transfer and paid the required $50 fee in respect to OK Stat. §1757 (Apdx. K). However, both this statute and the motion to transfer explicitly states the motion "shall be heard" at the scheduled hearing. Biolchini knew at the time that he would not complete this mode of transfer since he had no intention of attending the hearing.

On 6/18/86 Biolchini filed a $300,000 counterclaim for "libel and interference with business relationships". Although he paid the $3 filing fee, he did <u>not</u> pay the $25 affidavit fee stipulated by OK Stat. §1759 (Apdx. L) to effect the transfer to civil court. Biolchini knew at the time he would not complete this mode of transfer since he had no intention of paying the required fee in timely fashion.

On 6/19/86, the same day Major received the counterclaim in the mail, he also received, via Federal Express, two contradictory communications: Biolchini's motion to transfer and a letter from a second PennWell lawyer, Kathy R. Neal ("Neal") who called Major's attention to §1759 which, she wrote, "provides for automatic transfer" of a small claims court claim if the counterclaim is for more than $1,500. Neal did not inform Major, however, that PennWell's counterclaim was not only not automatic, it was also legally impossible since the required fees had not been paid.

The clear impression conveyed to Major was that PennWell was so sincere about its counterclaim tnat it was effecting it through not one but two modes of transfer. However, since these lawyers knew they intended to abort both modes of transfer and were using these papers, along with the counterclaim, not to promote a legitimate suit through proper civil procedure,

but only to bring Major to his knees to beg PennWell to drop its $300,000 counterclaim in exchange for Major dropping his claims, these papers represented not simply bad faith, but blackmail.

These two contradictory communications put Major in a dilemma. He knew from the motion to transfer, which stipulated it would be heard at the hearing, that if he did not attend the hearing, he would default not only on his $1,500 Boeing claim but also on PennWell's $300,000 transfer. On the other hand, if what Neal said was true and the transfer was "automatic", it would be a waste of time and money, not to mention stress, to fly to Tulsa for a small claims hearing regarding a matter already transferred to civil court.

Major called the courthouse several times. Three different clerks assured Major the case had not been transferred and the judge would hear his case at the hearing. Major flew to Tulsa.

After the docket reading, a third PennWell lawyer, Scott R. Rowland ("Rowland"), told Major there would be no hearing for he had met with the judge beforehand and secured his commitment to sign an order of transfer. When Major asked how the judge could agree to grant a motion to transfer, when the hearing, at which the motion was to be heard, hadn't taken place, Rowland pointed Major toward Judge James H. Griffin ("Judge Griffin"), who was on his way to recess.

Major put this question to Judge Griffin, who replied that the hearing and any order relating to same were irrelevant due to the fact that PennWell had filed a counterclaim in excess of $1,500, adding that the $300,000 counterclaim made the transfer "automatic", that it was "statutory" and that he had to "obey the law". Thus the conspirators used §1757 to require Major to fly to Tulsa to attend the hearing and §1759 to send him home without having had the chance to attend

it. This vicious harassment conveyed a clear message to Major as to what he might expect should he ever presume to return to Tulsa to seek a fair trial in civil court.

After Major returned to Washington, he spent several hours on the phone with the Tulsa County Court clerks trying to find out the status of the case. No one knew. The small court clerks said the case was no longer filed in their court. The civil court clerks said the case was not filed in their court. At the end of all these conversations, Major was invariably referred to the law clerk James Roberts ("Roberts"). Roberts said he did not know what to make of the situation, that never before had he come across a defendant applying to two modes of transfer when either one would have been sufficient.

Finally, a clerk discovered the missing $25 fee. She called a PennWell lawyer and asked hi to pay, which he did, on 6/25/86. Major was no then aware of the significance of this late

payment. Apparently the clerks were not either. To complete the mechanics of the transfer, Raymond concluded that since the counterclaim was for more than $1,500, the case should have been transferred pursuant to §1759. This was consistent with the impression left by Judge Griffin's docket entry which indicated that the counterclaim put the case above his jurisdiction.

Working on the basis of this same impression, which was conveyed to him by Raymond, Major filed a notice of appearance on 7/3/86, thinking this would give him an additional 20 days response time. On 7/14/86, a Tulsa lawyer, with whom Major had conferred, but had not hired, called Major to warn him he was within a few hours of defaulting on the $300,000 counterclaim and that he should call the court to ask for an extension. This lawyer said Major's notice of appearance was meaningless in view of the fact of Judge Griffin's order of transfer which required

a 20 day response time.

Major could not believe it. For Judge Griffin had given him a very clear understanding that he would not sign such an order, for it was irrelevant in terms of the "automatic" transfer via §1759. Neither Judge Griffin nor a clerk had ever mailed such an order. Had it not been for the sheer luck of this lawyer going into the files on his own and calling Major, Major would have had no way of knowing this Order existed until the 20 day response time had passed and Penn-Well had duly informed him of same.

Major did find such an order did exist, however (Apdx. C). Moreover, it had been doctored. The original file stamp of 6/23/86 had been scribbled out and the new one added of 6/27/86.

Judge Griffin had initially had it filed on 6/23/86, but then, in anticipation of Major calling the courthouse (after their sharp verbal exchange), pulled it, concealing it not

only from Major but also the clerks. Several months later Roberts told Major that, had he known about this order of transfer, he would not have been under any confusion as to how to effect the mechanics of the transfer. Judge Griffin waited until Major stopped calling the courthouse, and both he and the clerks were under the impression that the transfer had been effected via §1759, before Judge Griffin slipped back into the files his order transferring it via §1757.

In other words, Judge Griffin, in order to protect his local big business from attending a small claims hearing where what was at stake was $1,500, colluded with the PennWell lawyers to set Major up for an extortionary $300,000 default to drive Major into bankruptcy, from which posture he would hardly be in a position to pursue any claim he might have against PennWell.

Moreover, this deception was designed to deny Major the due process not only of

the small claims hearing but also to so hoodwink him that he would not catch on until the time limitation for a normal appeal to the Oklahoma State Supreme Court had run out. Since Judge Griffin made certain Major did not receive his order within that time period, Major had no order upon which to appeal.

The PennWell lawyers resorted to this illegality for the simple reason that they knew they could not sustain a denial of the Boeing claim or the defense of their counterclaim in an open court, even before a judge biased in their favor. But to prefect this scam, PennWell had to voluntarily default on both its counterclaim and the Boeing claim.

PennWell defaulted its counterclaim by not paying the required $25 fee before the small claims hearing as stipulated by §1759. PennWell defaulted on the Boeing claim by waiving its right to the hearing through meeting with the judge ahead of time and asking that it not take place. Major's affidavit clearly states

a default judgment will be entered against the defendant if he does not attend the hearing, which is also stipulated by the motion to transfer (also defaulted), Judge Griffin's order, and §1757. Moreover, Judge Griffin's order, pursuant to §1757, which stipulates a hearing, pursuant to the motion to transfer which stipulates a hearing, and pursuant to Major's affidavit which stipulates a hearing -- after Judge Griffin had already dismissed that hearing -- is a fraud.

In addition, Rowland has twice publicly acknowledged his highly improper meeting with Judge Griffin prior to the hearing. One instance will suffice. On pg. 138 of the 6/25/87 deposition he took of Major, Rowland stated:

> "Well, I'll represent to you that - it's not my deposition, but I'll represent to you that when Judge Griffin walked into the classroom, I informed him that on this particular case we had filed a counterclaim in excess of $1,500. And that was the extent of that."

The "extent" of this representation is that even though PennWell filed the counterclaim, it did not do so in a proper manner to effect the transfer via §1759 and so put the case out of Judge Griffin's jurisdiction, for, as Rowland knew, the required $25 had not been paid.

Judge Griffin knew it too. He didn't need a defendant lawyer to tell him a case had been transferred. He had a clerk to tell him that. No clerk told him for the case had not been transferred. Nor was the transfer registered on the court records.

And, as every judge, lawyer, and clerk in Oklahoma knows, it is very easy for a defendant to transfer a case according to either §1757 or §1759 provided proper civil procedures are followed. Statute §1759 does, in fact, provide for an "automatic" transfer, but only provided the fees are paid before the time of the hearing. And Statute §1757 is almost automatic. All the defendant has to do is pay

the fees, attend the hearing, and give almost any reason at all (i.e. the desire for the more formal procedures of civil court) and the case will be transferred. The one reason that will not be accepted is that the defendant wants to file a counterclaim for more than $1,500, for the very simple reason that the defendant had ample opportunity to effect that sort of transfer via §1759 and should have already done so according to the stipulations of that law.

OK Statute §1759 clearly states that the defendant

> "... shall deposit with the clerk the court costs that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure."

This law is not discretionary. It is, as Judge Griffin said, "statutory", and he was required to "obey the law". But Judge Griffin, instead of dismissing the

counterclaim, rather dismissed the small claims procedure. Judge Griffin, in short, broke the law, as did the PennWell lawyers. And it is this breaking of Oklahoma law which is the foundation of the Conspiracy and of PennWell's entire case.

C. WHEN THE PRO SE ATTEMPTS TO PRESENT THE CONCRETE EVIDENCE OF THIS CONSPIRACY TO THE RELEVANT STATE COURTS AND SUBSEQUENT FEDERAL COURTS, DO THESE SAME LAWYERS AND VARIOUS PRESIDING JUDGES HAVE THE RIGHT TO COLLUDE IN SUPPRESSING THIS EVIDENCE, HARASSING THE PRO SE THROUGH AN ONGOING DISRUPTION OF CIVIL PROCEDURE, AND DENYING HIM THE RIGHTFUL AWARDS WHICH WOULD FLOW FROM THE UNCOVERING OF THIS EVIDENCE IN OPEN COURT?

Major attempted to remove the Boeing case to the U.S. District Court at Seattle. He soon discovered he had no legal basis for doing so, but, in the process, unraveled the Conspiracy. Major acknowledged his technical errors, but argued they were irrelevant in terms of the Conspiracy, the evidence he presented as the basis for a new trial. However, the presiding judge, Judge

Barbara J. Rothstein ("Judge Rothstein"), reprimanded Major, stating he had no basis whatsoever for his case, and that the actions of the PennWell lawyers were blameless, thus giving those lawyers carte blanche in their vendetta to destroy Major and his family for no other reason than he sought a fair trial. (Apdx. D)

Major appealed twice to the Oklahoma State Supreme Court, once to Judge Griffin, and twice to Judge Jane P. Wiseman ("Judge Wiseman"), the presiding judge at the Tulsa County Court, who also withheld vital timeliness information from Major in a way analagous to Judge Griffin, causing Major to again come perilously close to defaulting on the $300,000 counterclaim. All of these appeals were ignored.

Major repeatedly requested that Judge Wiseman dismiss the counterclaim. For PennWell, after defaulting during the Conspiracy, again defaulted on both

the Boeing claim and its own counterclaim by failing to respond to Major's amended petition and answer to counterclaim in the 20 days stipulated by Judge Griffin's order and §1757, or ever. After almost three years from its filing, this unacted upon counterclaim remains on the Tulsa County Court docket.

On 10/7/86 Major filed at the U.S. District Court in Tacoma, WA, his complaint for Breach of Contract (for the latter five articles), Conspiracy to Deny Payment on a Defaulted Claim, and Intentional Infliction of Emotional Disress.

The Seattle, WA PennWell attorney, Bruce D. Campbell ("Campbell"), Perkins Coi, filed papers with outrageous distortions, such as turning Major explicit statement that he would continue to fight the institutionalized violence of the vendetta with peaceful, law-abiding means into the threat that Major would put a shotgun to the head of any judge who came into contact with the case.

As an alternative to dismissal, Campbell introduced an affidavit by PennWell vice president, V. John Maney ("Maney") arguing for a transfer to Tulsa. Maney offered a "partial" list of 14 "parties and witnesses" who lived in Tulsa. Yet since most of the list was made up of people such as an ad salesman in California who did not live in Tulsa and/or who had only tenuous or a non-existent connections with the case, it was clear that this laundry list was only another ploy to obstruct justice. PennWell has since conclusively demonstrated this affidavit's bad faith by calling only four "parties and witnesses" to the trial, two of them by phone deposition, and all four of them from, not Tulsa, but Littleton, MA.

Nevertheless, on the basis of this clearly-perjured affidavit, the presiding judge, Judge Robert J. Bryan ("Judge Bryan"), transferred the case to Tulsa for the "convenience of parties and witnesses". (Apdx. E)

After the case was transferred to the U. S. District Court in Tulsa, to be tried, pursuant to 28 U.S.C. §1391(a) and (c), under Judge Thomas R. Brett ("Judge Brett"), Major voluntarily dismissed his Boeing claim from the Tulsa County Court for consolidation. In a petition to amend complaint he introduced the Boeing claim as a fourth cause, Larceny, arguing that PennWell's soliciting of the article, paying for it, then bouncing the check while confiscating it constituted larceny. He also introduced a fifth cause, Libel, showing how PennWell's "shotgun" and other libels were instrumental in obstructing the justice of a fair hearing in various courts. Major also introduced a motion for summary judgment.

Rowland filed a motion to dismiss the Conspiracy cause which was several months untimely in respect to Fed.R.Civ.P. R.12(a), and, moreover, already adjudicated in respect to R. 12 (b)(6), since Judge Byran's order clearly

states that he transferred the case to Tulsa not to see if it should be tried there, but to stipulate it should be tried there for the "convenience of parties and witnesses".

PennWell twice formally defaulted on Major's summary judgement motion. Rowland lied to both Major and the court to secure an extension, claiming a "severe snowstorm" prevented an affidavit from Littleton, MA arriving in overnight mail. Major discovered and reported to Judge Brett that for the entire week in question there had been only a half inch dusting of snow and no postal or Federal Express planes had been delayed.

Moreover, in response to Major's then filing both default and summary judgments against PennWell, Rowland, offering absolutely no defense at all, simply listed Major's motions laundry-list fashion, and stated they should be "stricken or denied without hearing" and that the court should

impose Rule 11 sanctions against Major for submitting those motions. Judge Brett did what he was asked.

Judge Brett ordered Major to fly to Tulsa for a 3/19/87 hearing for a status conference and to resolve the summary judgment and other motions. But there was no status conference nor did Judge Brett address the summary judgment motion since he told Major he hadn't read any of his papers since he had "399 more important cases to attend to".

The scheduling of the case and response to the summary judgment motion arrived in the mail several weeks later in the form of Judge Brett's 4/21/87 order (Apdx. G). Through this sleight of hand an actual hearing on the Conspiracy, in which the facts might be aired in open court, was bypassed.

Judge Brett proclaimed the Conspiracy is "so lacking in factual allegation and proof that it must be dismissed." Yet the factual allegations and proof (as detailed in Question

B, supported by court records and documents, statutes and PennWell papers), submitted to Judge Brett, were suppressed by him. Thus, Judge Brett allowed PennWell, in violation of Rule 56(e) to prevail on "mere allegations or denials". Judge Brett's order is an exercise in the same vagueness. He refers only to general allegations, studiously avoiding the specifics such as Judge Griffin meeting with Rowland ahead of the hearing; the theft of the $25 court fee; and Judge Griffin, in violation of §1759, dismissing the hearing instead of the counterclaim.

While illicitly dismissing the Conspiracy cause, he unlawfully prolonged the case in cooperation with PennWell's successful efforts to bankrupt Major. Judge Brett's retaining of the emotional distress cause was hypocritcal since, if all that remained of the case was what he derisively called a "simple contract dispute", it could not reach the

level of outrage. As set forth in Question D, the nature of the contract was such that no additional relevant facts could (or did) emerge at trial. Besides, Judge Brett based his denial of summary judgment for the contract issue on the late-arriving and transparently perjured affidavit of CGW publisher, Robert Holton ("Holton"). One example: Holton swore "the Boeing article failed to meet the 'highest editorial standards' promised by Major and was not of a publishable quality" when Judge Brett had in front of him the letter of Holton's managing editor who stated he was intending to publish and pay for the article and the check Holton had issued for same. The only additional fact or document to emerge at the trial regarding Boeing was this same managing editor's memo stating the article was "acceptabl and setting an immediate date for publication.

Judge Brett continually belittled Major and his case, and made constant threats of sanctions dismissal, needless trips to Tulsa, and other

harassments. Judge Brett required Major to make the 1,500 mile trip to Tulsa for a non-existent status conference and summary judgment hearing despte the fact that Major requested a phone hearing, and such requests are invariably granted when one of the parties lives a great distance away. The only business remotely approached was Judge Brett's dismissal of Major's motion to amend complaint. But Judge Brett neither expected nor invited oral arguments. He simply announced a decision already made. Major's presence was not required for a phone conference, much less a 1,500 mile trip. Judge Brett could have simly had a clerk mail the decision through the mail, as he eventually did (Apdx. F). This needless trip was simply a reenactment of Judge Griffin's vicious harassment.

Judge Brett ordered a jury trial when neither side had requested one. He ordered Major, who filed his suit in Tacoma, to fly to Tulsa to have his deposition taken before a

U.S. Magistrate "day by day" until completed. (Apdx. H). Major forced Judge Brett to back off on these two harassments, but only after considerable time, expense and distress.

After threatening Major with sanctions and/or dismissal if he did not cooperate in discovery, he allowed PennWell to go past his scheduled deadline without releasing any of the requested papers (in the process taking off a week from Major's time to deliver and setting PennWell's date on the Friday before trial briefs were due). Judge Brett allowed PennWell to suppress most of Major's discovery requests, any one of which would have implicated PennWell in the Conspiracy or other wrongdoing. Major filed several motions to compel and, at no time, did PennWell, in violation of Fed.R.Civ.P. R.34(d), file a protective order.

When Major discovered that CGW planned to publish an article on Boeing in August after the July trial, he requested this article

be brought to trial in manuscript form. Rowland refused. Major filed a motion to compel and to amend complaint to include PennWell's violation of U.S. Copyright laws. Again, PennWell offered no argument and filed no protective order, and Judge Brett denied Major's requests (Apdx I) stating that CGW's publishing an article on Boeing, after confiscating Major's article on Boein, was "unrelated", and that in being exposed in open court to this flagrant violation of U.S. Copyright laws, Pennwell would be "greatly prejudiced".

On the other hand, Judge Brett continually forced Major to hand over to PennWell objectionable material despite the fact that Major filed protective orders and PennWell, never filing a motion to compel, offered no reasons whatsoever. And Judge Brett then went on to falsify this material.

One example has to suffice. Major ob-

jected to PennWell's entering his letters mailed after the Biolchini letter since they were after and not relevant to the contract termination; were personal, not sent to the public and so were not relevant even to the counterclaim; the copyright laws gave Major the public reproduction rights to these letters; they were negotiating instruments; were entirely redundant of what Major had stated in other contexts; and PennWell intended to use them only to perpetuate its libel. In his point 33, especially in conjunction with point 34 (Apdx. G), Judge Brett conveys the clear impression that Major attempted to extort $700,000 from PennWell or he would then damage PennWell's business and reputation through his newsletters; and then Biolchini replied threatening Major with a potential libel action.

However, the fact is that Biolchini's letter is dated 2/3/86 and his threat was directed to stifling Major's stated intention of

exercising his First Amendment rights by airing a complaint in public. Major's letter, of 2/14/86, used the $700,000 as a defense against PennWell's threat of malicious prosecution. In this same letter Major explicitly stated he would drop the $700,000 charge in exchange for the contractual amount due.

In the same note 33 Judge Brett stated the "libelous character" of the newsletters was not before his court. But that did not deter him from adjudicating the matter in PennWell's favor by reporting not that PennWell alleged that their purpose was "damaging PennWell's business and reputation", but proclaiming this as a fact. As Major testified, the purpose of the newsletters was to appeal to PennWell's conscience. PennWell left Major no option, short of litigation, but to make the matter public, since it refused any rational dialogue with Major, leaving unanswered the dozen letters Major wrote after the Biolchini threat letter, as well as

sabotaging Major's two separate attempts at a Better Business Bureau arbitration.

Whenever Judge Brett could use this $300,000 "counterclaim" (irrelevant to the proceedings, since not only had it been improperly filed, illegally transferred, twice defaulted, and never acted upon in state court, it has also never been filed in federal court) as an instrument of blackmail and intimidation, he did not hesitate to do so.

At the 3/19/86 meeting Judge Brett made abundantly clear to Major that the only papers he would give serious consideration to were PennWell's motion to dismiss and the counterclaim. He shouted at Major "not to return to this court until you attempt to settle with these people!" Biolchini's offer? "You drop your claims and we'll drop ours." In other words, at the very point that the illicit power of PennWell's blackmail threat had been enervated, Judge Brett revitalized it with the seal of a U.S. District Court.

However, whenever Major referred to this counterclaim as a critical factor in his emotional distress, which was a legitimate cause before the court, Judge Brett hypocritically said the matter was irrelevant since that claim was "pending" in state court.

Even on the untenable premise that the counterclaim had been properly filed, it was still, on its face, in transparent bad faith since PennWell never acted upon it again once it had fulfilled its function of obstructing the justice of the small claims hearing.

Major has repeatedly written PennWell that if it could prove a single line of the newsletters was in any way libelous or untrue and furnish evidence that they caused PennWell to lose ten cents much less $100,000 during the months of April and May, 1986, he would immediately drop all his claims and send PennWell a check for $100,000. PennWell has never responded to this offer.

Furthermore, Judge Brett was well aware that discovery had uncovered the fact that all of the PennWell executives knew full well that the only "damage" that could be associated with the newsletters was that of the truth, and that the PennWell counterclaim was never intended to be more than a vehicle for malicious prosecution and the obstruction of justice.

Senior vice president, Joseph A. Wolking ("Wolking"), who was soon to perjure himself by signing the counterclaim's verification, wrote in his 4/28/86 memo that he knew Major "was protected by the First Amendment" and "there is no judicial recourse for us ... " thus acknowledging that the newsletters were in no way libelous or untrue or PennWell would have judicial recourse under the libel laws. In his 6/10/86 memo, Michael Elphick ("Elphick"), publisher of one of the PennWell publications to all of the advertisers of which Major mailed his newsletters, wrote, "We have

no tangible evidence that he (Major) has caused us to lose any advertising business." Yet just two weeks later, in his 6/23/86 memo, president Philip C. Lauinger, Jr. ("Lauinger"), knowing that Major's newsletters were absolutely true and had caused PennWell no loss of ad revenues, announced PennWell was sueing Major for libel and $100,000 in lost ad revenues plus $200,000 in "punitive damages.

Yet Judge Brett declared that all PennWell's actions from the termination to the bounced check to the filing of the counterclaim and beyond were "not motivated by bad faith", were for the purpose of protecting PennWell's "legitimate business interests", and did not constitute "extreme and outrageous conduct". Judge Brett termed Major's bringing to his court the undeniable evidence of PennWell's rampant malice and illegality as the result of his "demonstrated unfortunate emotional instability."

The appeals court backed Judge Brett all of the way. After filing three motions that Judge Brett disqualify himself, Major filed a mandamus petition in the appeals court, which was likewise denied. After Major brought up brief transcript excerpts which showed that Judge Brett based his trial findings upon affidavits revealed to be perjured by the testimony of the defendants at the very trial over which he presided (see Question D) -- which moved Judge Brett to write that Major was "mentally deranged" -- PennWell motioned that the entire transcript be brought up. Major pointed out that the this was in violation of the appeals court explicit rules regarding unnecessary transcripts, that the main issues such as the Conspiracy had been suppressed before trial, and gave reasons for his accurate prediction that PennWell could not and would refer to anything in the transcript that was not entirely redundant of what had been put forth countless times before. The appeals

court ordered Major to bring up and pay for the unnecessary transcript which PennWell subsequently only superficially and barely referred to. Major attempted to issue additional summonses to include other parties such as the United States and the PennWell law firms as defendants. Judge Brett's personal clerk, in violation of Fed.R.Civ.P.R.4 (a) refused, instead sending the request to the appeals court, which buried it.

This Court should understand that, at no time (with one exception) has any lawyer or judge even addressed, much less disproved any of Major's facts, logic, laws, interpretations, or documents regarding the Conspiracy. The one exception is that Rowland, in his appeals brief, in acknowledging that PennWell had not paid that critical $25 fee, the linchpin of this case, put forth the preposterous argument that since Major had paid the $25 required fee for his small claims affidavit, PennWell did not have to pay its $25 fee for

the transfer of its counterclaim to civil court.

From first to last, the PennWell lawyers and judges substituted arguments libel for legal. The PennWell lawyers started it off, relentlessly pressing the "pro se" button, with phrases such as "pro se, ignorant of the law and civil procedure", who "strikes out at judges", calls a federal judge a practicing witch, threatens to put a shotgun to the heads of presiding judges, is "paranoid", all of which dovetailed neatly with Judge Brett's depiction of Major's "emotional instability" and "mental derangement".

In response to this outrage, the appeals court found it

> ... "important to commend the district court on its tempered condemnation on plaintiff's often abusive personal attacks on the presiding judge and others involved in this litigation. The tolerant but firm professionalism exhibited by the district court in this case was as exemplary as plaintiff's conduct was inappropriate."

In the context of the PennWellian legal-speak which characterizes this case, it's clear that what the appeals court really means by Major's "abusive personal attacks" is that he unflinchingly used the truth as a weapon to cut through the sanctimonious sham of the prolamations of all of these lawyers and judges to expose the fact that they have defiled not only their personal honor but also that of the system of justice which gives them sustenance; through their immersion in the moral cesspool of a small time small claims swindle designed to cover up an arrogant attorney's personal act of larcency. What the appeals court really means by Major's "inappropriate conduct" is that a United States citizen has not only refused to submit to becoming a compliant victim to these people's vendetta of illegality, irrationality, and institutionalized violence, but instead has consistently presented irrefutable and irrefuted evidence that the legal

foundations of their case are the breaking of law, default, and the theft of a $25 court fee. Shakespeare said it best: "Truth is truth beyond all reckoning."

D. DOES A FEDERAL JUDGE, IN ADJUDICATING A CONTRACT DISPUTE, HAVE THE RIGHT TO TOTALLY DISREGARD THE CONTRACT AGREED TO AND SIGNED BY BOTH PARTIES, INSTEAD RELYING UPON A PREVIOUS CONTRACT WHICH WAS NEITHER ACCEPTED NOR SIGNED BY THE PRO SE, ALSO BASING HIS FINDINGS UPON HEARSAY, AFFIDAVITS REVEALED TO BE PERJURED AT THE TRIAL OVER WHICH HE PRESIDED, PLUS FABRICATIONS PRESENTED BY THE LAWYERS FOR WHICH THERE ARE NO DOCUMENTATION AND WHICH ARE IN DIRECT CONTRADICTION TO ALL OF THE EXISTING DOCUMENTATION?

After the CGW editor, Pope, agreed to sign Major's contract for the six commissioned articles, the CGW publisher, Holton (as Major was to learn later) instructed Pope to insert a loophole clause of "payment upon acceptance", which, in the trade, is an euphemism which means, when the chips are down, a magazine can reject a commissioned work for any reason at all because of "non-acceptance". Major rejected this change and successfully negot-

iated Pope back to signing the original contract (Apdx. M).

However, PennWell and Judge Brett argued all their points, without exception, on the basis of the "on acceptance" contract that never was. The four allegations they put forth all rose from Holton's affidavits: 1) Major refused to make the corrections requested by the Marathon analyst, David Millard, ("Millard"), referred to as the ("Millard incident"); 2) In the rewrite CGW associate editor, Stephen M. Porter ("Porter"), requested of Major in the first draft (of two) of the Boeing article, though Major made some minor corrections, he failed to make the "substantive" corrections asked for; 3) After the Boeing check was mailed, Boeing personnel told Porter they found "substantial" inaccuracies in the rewritten version; and 4) the "threat" of Major's newsletters.

What this Court should note is that these

allegations, even if true (which, as will be shown, they are not) are totally irrelevant to the actual contract, which clearly states:

> "Also, it is understood that the Author's proposed work will be done on assignment, which means that the Publication will pay the Author, in full, within 30 days of its receipt of the Author's completed work, according to the terms of this agreement, and that this payment will be non-refundable."

At the time of the termination, Major submitted two articles. PennWell paid for the Boeing article, but refunded it with the stop-payment on its check. It did not pay for the Marathon article and announced it would not pay for any other. PennWell breached the contract.

The only way PennWell could have legally refused payment for any one much less six of the articles is if a CGW editor asked for corrections within 30 days that Major did not make. The relevant phrases in the contract are:

> "The terms of agreement between the Author, MICHAEL J. MAJOR, and the Publication, COMPUTER GRAPHIS WORLD, ... are ... a response to all communications within 30 days ... The Author, Michael J. Major, guarantees that his work will meet the highest

editorial standards, that, if the Editor finds the work in any way unsatisfactory, the Author will make all the necessary corrections for no added charge."

PennWell and Judge Brett have insistently plucked the phrase "highest editorial standards" out of the very sentence in which it occurs to make it mean a "subjective" fantasy which allows PennWell to terminate the contract on the basis of four reasons which were not told to Major, either orally or in writing at the time of the termination, nor are they in evidence in any of CGW's internal memos as indications that they thought Major was guilty of a breach, but were simply fabrications made up over a year later by the PennWell lawyers for trial.

The negotiating letters between Pope and Major offer abundant evidence that both sides were aware that all the "highest editorial standards" phrase guaranteed is that Major would make any changes the editor requested. Moreover,

the redundant footnote Pope inserted into the contract makes this even more achingly obvious:

> "Payment period of 30 days starts only once Author has made any corrections or rewrites Editor may request."

Both editors testified at trial that Major made all of the corrections they requested. And, even more significantly, Holton, in his second, 7/9/87 affidavit, swore that aside from the first draft of the Boeing article, for which the editors requested corrections which both of them told and/or wrote Major were acceptable, "no editor at CGW requested corrections of any other article submitted by Major".

In other words, following its custom, PennWell defaulted on the breach of contract issue before the trial began.

This salient fact is the key to understanding the massive amount of perjured and defamatory testimony of PennWell at trial, sustained and perpetuated by Judge Brett.

The PennWell story goes like this: Major first misrepresented himself as an employee of PennWell to dishonestly gain access to the various corporations interviewed. Major submitted a badly written first draft of the Boeing article, containing numerous errors of both content and style, but the CGW editors, out of the kindness of their hearts, gave Major another chance with the rewrite. However, the rewrite, though showing improvement on minor matters, didn't make the substantive corrections requested by Porter. Furthermore, after the check had been sent, Boeing personnel told Porter that the rewritten article contained substantial inaccuracies. At the same time the CGW editors discovered that Major had refused to make the corrections requested of him by Marathon's Millard, being totally uncooperative and verbally abusive, swearing at him several times and slamming down the phone. The sum total of such professional incompetence and reprehensible con-

duct, along with the threat of his newsletters, was such that PennWell was justified in terminating the contract.

Judge Brett gave a special embellishment to Major's phone conversation with Millard in the point 3 footnote of his findings:

> "Major misconceived Millard's suggestions for changes in the Marathon article as censorship, thereby implicating a First Amendment free speech issue. Major's conclusions in this regard were erroneous because Miller's concerns dealt with essentially with article content, accuracy, and misquotes. Major became indignant and told Millard to 'go fuck himself' and hung up."

So here we have the portrait of a writer not only totally incompetent, unprofessional, and dishonest, but also so bizarrely stupid, self-defeating, and irrational that instead of simply trying to sneak the inferior article past Millard, he willingly sent it to him for corrections and then, when Millard called to ask for these corrections, Major few into an egomaniacal rage, told Millard to "go fuck himself" and slammed down the phone.

This portrait, which projects so much bad

faith onto Major that attention to PennWell's bad faith is effectively deflected, dovetails neatly into Judge Brett's depiction of Major's "emotional instability" and "mental derangement".

Should this portrait be true, it would represent a devastating indictment of Major; however, if not true, an even more devastating indictment of PennWell in general and, in particular, Judge Brett.

Regarding the Millard incident, even if what Judge Brett said was true, it is irrelevant to the contract, which is with CGW, not Marathon. And Major guaranteed he would make any changes a CGW editor would request, not a Marathon employee. But the fact is that Millard demanded not corrections, but censorship.

Why is a federal judge entering the words "go fuck yourself" in a court proceeding when all of the parties had preserved the decorum of "go bleep yourself", the meaning of which

was clear? The obvious answer is that the word "fuck", especially when taken out of context, has a prejudicial connotation. Judge Brett did not say that Millard said A, by which he meant B, but Major had wrongly misinterpreted it as C. No, he simply said Millard asked for corrections but Major said, "go fuck yourself".

Where did Judge Brett get his information? There were only two people on the phone, Major and Millard. Judge Brett totally falsified Major's version as stated at trial and in his papers. Major agreed to send the manuscript to Millard only on the condition that Major would correct any errors of fact or context but would not submit to censorship. Millard twice explicitly agreed. When Millard called he demanded the withdrawal of the article or semantic variations of the same thing. When, after 45 minutes of Major telling Millard repeatedly to send in any corrections he would make, and Millard was unable to point to a

single point of inaccuracy in the article, Major told Millard that any further discussion he wanted of the matter he would have to take up with a CGW editor and gave him CGW's number. When Millard then threatened Major with a lawsuit from Marathon Oil, Major gave that gentleman the verbal sendoff he deserved and hung up.

PennWell did not call Millard as a witness for the very good reason it knew that his allegation that Major refused to make corrections was slander and would not hold up under cross examination. Judge Brett, therefore, based his findings on hearsay from PennWell personnel, hardly an unbiased source. Moreover, the secondary documents, the Wright memo, reflecting Millard's call to CGW, Millard's 11/22/87 letter to Major, and his returned manuscript with unintelligible circles of "misrepresentation" corroborate Major's story.

Even Rowland admits that Millard

had agreed not to impose censorship as a condition for reading the article, and that Major had told him to send any corrections he might have. The Wright memo says, "much of the article is excellent" and Millard's letter states "the content of the graphics philosophy on pages 4-8 is basically correct in the context of Marathon's technical computer activities".

It's clear his letter is demanding censorship, not corrections (i.e. "You ordered me to correct 'discrepancies' and mail them back", "I was told you would only fix non-factual in-information" (Was Major supposed to fix factual information?) and "Your reply was that I was to 'send the corrections'". It's transparent that in none of the three above documents was he pointing out any errors in a manner that a writer could corrent them. On the untenable premise that he had, the corrections would have been meaningless since both Millard's letter and the Wright memo made unequivocally

clear that Marathon will do everything in its "power" to "prevent publication of the article anywhere".

Had the issue been corrections rather than censorship, a CGW editor would have told Major to make the corrections or Millard to send the corrections to CGW. But, as McMillan testified, when he later spoke with Millard he agreed not to proceed with the article. In other words, he violated the most fundamental journalistic standards by caving into censorship. And Judge Brett, in helping his wealthy local business cheat on its accounts payable, turned a principled stand against censorship into an exercise in defilement of the First Amendment.

In terms of the "substantive errors" that Holton said remained after Major's Boeing rewrite, Major, at trial, announced he was prepared to go through the corrections one by one and have Porter and McMillan testify he had made each and every one or

perjure themselves several times each. Both editors promptly testified that Major made 100 percent of the corrections requested.

Regarding the alleged "substantial inaccuracies" that Boeing personnel supposedly pointed out in the rewrite, Major, at trial, told Porter that Holton had testified that no Boeing personnel had ever contacted CGW with a complaint of any kind; that the Boeing personnel had found the article Major sent to them 100 percent accurate; and that when Major had called the Boeing personnel a few days before, they stated they recalled Major and both interviews, but did not have any recollection of ever having spoken to a CGW editor. Porter promptly testified that no one at Boeing had ever complained about Major's article or conduct in any way, that he had never spoken to anyone at Boeing about the article, and did not even know if they had read it.

This did not prevent Judge Brett from copying, in his findings, from Holton's affidavits con-

cerning the rewrite being "not ready for publication" and the "substantial inaccuracies" pointed out by Boeing, almost verbatim. Thus Judge Brett did not hesitate to base his "facts" on affidavits revealed to be perjured at the very trial over which he presided.

Holton, in his trial deposition, swore that Major's behavior in the Millard incident was so reprehensible that he would never consider allowing such a writer represent CGW to an outside corporation. Yet he testified that he heard about the incident in the Wright memo, dated 11/21/85. Yet that did not prevent him from allowing his two editors to send Major back to Boeing for a harassment rewrite just two weeks later.

Holton testified he had found out about the "substantive changes" and the "substantial inaccuracies by the 1/7/86 McMillan memo when a meeting was held to decide what to do with Major. But all that is reflected in that memo (outside of "dump Major right

away" -- which Holton swore McMillan never wrote) is that the rewrite was acceptable and slated for March 1 publication. The check is dated 1/14/86. McMillan's letter accepting the Boeing article and terminating the contract is dated 1/16/86. Holton also testified that Major's representing himself as a writer whom the CGW editor had told to search out story ideas and then (after the contract had been signed) as having been commissioned by CGW to write the article as professionally correct. Holton then testified that a rejected article is always accompanied by the return of the article with a rejection letter, that CGW had never mailed Major same. Holton then twice swore that the Boeing article had never been rejected.

It should be noted that the four arguments PennWell presented at trial were different from the three reasons in McMillan's letter: "unsuitability of the manuscripts", "change in editorial focus" and fiscal restraints".

The latter two reasons obviously have nothing to do with the contract. Nor does the first. When Major called McMillan after the termination, he told Major, as had Porter previously, that he had not read the Marathon piece. So no one at CGW was in any position to judge the suitability of the Marathon piece since it had not been read, and the Boeing piece was certainly suitable for it had been accepted for publication.

Why did not McMillan state the trial reasons in his letter? He knew if he said Major had not made the "substantive changes", requested, Major would have asked, "what changes?" McMillan knew that if he said Boeing personnel had found "substantial inaccuracies", Major would have called Boeing and asked "what inaccuracies?". McMillan knew if he said Major failed to make the changes Millard asked for, Major would have said, "tell Millard to send them along." These were fabrications

the PennWell lawyers made up for trial. At trial McMillan admitted his three reasons were also fabrications so as not to hurt Major's feelings.

What happened is that Major had previously had a good relationship with PennWell. He had sold six article to two editors, one of them Pope, at another PennWell publication. Pope continually wrote Major's work was "excellent" and Major was "one of the most professional writers I have known". When that magazine folded and Pope moved on to CGW, he took Major on, with the same price and contract as before, in a company in which the average price is $400 and no contracts are signed with writers. This was a time of volatile change for CGW. The magazine was being moved from California to Littleton. There was a computer slump and ads were down. Holton, new to the magazine, as were McMillan and Porter, saw the contract and told Pope to insert a loophole clause. Major refused and

negotiated Pope back to the original contract.

In the Millard incident the new regime saw a pretext for "dumping Major" (as they were to later dump Pope), but knew it could not stand on its own. McMillan saw an opportunity in that the magazine was in transition from a very technical to a more readable style. He neglected to tell Major of this change, hoping to force Major out in a harassment rewrite. But Major turned the rewrite around in just a few days, causing Porter to tell Major "it was just what we were looking for", and Major sent the Marathon piece in as well, thus making McMillan due for what was then his entire month's freelance budget. Porter called Boeing fishing for "substantial inaccuracies". He couldn't find any. McMillan decided to cut his losses by paying for the Boeing piece, then "dumping Major".

The McMillan letter did not ask Major for corrections to the Boeing article because

CGW was accepting it for publication. The letter did not ask for corrections to the Marathon piece since it was terminating the contract. McMillan did not state that Major had breached the contract. He stated that CGW was terminating it. There is no mention whatsoever in letters to Major or internal memos of the "substantive changes", "substantial inaccuracies" or newsletter "threats". The Millard piece is mentioned only obliquely. And in no case is there any evidence that CGW personnel ever thought Major had breached the contract. In fact, just the opposite is the case. McMillan closed his memo to Holton with:

> "I suggest we dump Major right away and have written a letter to that end. I am somewhat concerned, though, that he might put up a stink based on his agreement with David. Would you please review that agreement (in the file) and my letter before I go further? Thanks."

McMillan was fully aware that CGW was breaching the contract, and, in chalking up points by "dumping" a highly-paid writer, was also protecting himself by putting his "con-

cern" in writing to his boss. Holton, however, didn't follow McMillan's advice. He didn't read the operative contract.

Holton, in his testimony, agreed with Major's recollection that in his 1/31/86 call to protest the termination, Holton told Major that even at that late date the Boeing article was still accepted and he had issued the check. It was in this conversation that Holton told Major "We agreed to pay upon acceptance but are not accepting more articles by Michael Major". Here, for the first time, Holton realized that Major had not signed the loopholed contract. Not only had Holton not been able to fleece Major, he hadn't been able to enforce the loopholed contract on his own editor. It was this realization and not any perceived "threat" (unless it was the threat of knowing he was legally bound by the contract) which caused Holton to call Biolchini and tell him to put some legal screws into Major.

As Biolchini's 2/3/86 letter demonstrates absolutely, the check was not bounced because of any "threat" in Major's 1/21/86 letter announcing the newsletters. Biolchini referred to that letter and stated in spite of what he termedits "intentional defamation and libel", he offered the full payment for the Boeing article (already mailed) as a "jesture" of "good faith" and a "complete settlement of this dispute" - at the very moment he was ordering a stop payment in an act of violence designed to intimidate Major from exercising his constitutional rights of airing a complaint in public and/or taking it to court.

The Oklahoma Commercial Code, 12. O.S. §1-203, pg. 36, states:

> "Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement ... This section is the 'heart' of the Commercial Code."

Judge Brett, in calling that indelible act of bad faith, the bounced check, "good faith",

joined with Biolchini and all of the other conspirators in striking at the heart of OKlahoma law, as well as the fundamental principles of the United States Constitution.

E. DOES THIS FEDERAL JUDGE, IN RULING FOR THE PRO SE FOR A PORTION OF THIS CONTRACT DISPUTE, HAVE THE RIGHT TO THEN ARBITRARILY DENY HIM ALL OF THE AWARDS FLOWING FROM HIS DECICISION, WHEN THESE AWARDS ARE STIPULATED IN STATUTORY PROVISIONS FOR ATTORNEYS FEES, THE EXPLICITTERMS OF THE CONTRACT, PLUS ALL THE RELEVANT STATE AND FEDERAL LAWS REGARDING AWARDS STEMMING FROM A BAD FAITH BREACH OR BAD FAITH ACTIONS?

Judge Brett ruled in Major's favor on the Breach of Contract cause for the Boeing claim, but then denied him all of the awards flowing from that award, to which he was legally entitled from several sources.

The first is attorney fees. Oklahoma case law allows attorney fees for the prevailing party in both diversity jurisdiction cases in federal court and in contract disputes. Moreover, there is a specific statutory entitlement for attorneys fees from Judge Griffin's order and OK Stat. §1757.

There is no negative precedent in Oklahoma law regarding a pro se being awarded attorney fees. Even Biolchini has acknowledged that Oklahoma law does not address the subject one way or another. And Biolchini himself pointed to the Cox v. U.S. Dept. of Justice case as a precedent for a federal court awarding a pro se attorney fees.

Even if Major should not be allowed attorney fees, the contract stipulates that Major should receive essentially this same award through its provision of "normal expenses". The hundreds of hours Major has put in on this case are collection costs required to receive payment. All of Oklahoma case law (for a sampling see the Table of Cases marked by an *) support Major's contention that the "normal expenses" should cover such collection costs, especially in a bad faith breach such as this.

Christian v. American Home Assur. Co. 48 Okla, B.A.J. 1714, 1715 (7/12/77) clearly

established that if the defendant's breach of contract is accompanied by bad faith, he is liable (separate from the independent tort of intentional infliction of emotional distress and punitive damanges), all of the aggravated monetary damages and mental suffering resulting from the breach, including loss of earnings, credit liabilities, litigation costs, and the mental anguish which results.

Also, both Fed.R.Civ.P. R. 11 and R. 56(e) stipulate reasonable expenses, including attorney fees for the other side's bad faith papers, which indicates Major should be paid these expenses even if he was not allowed attorney fees.

Judge Brett, in a sactimonious show, said he was issuing sanctions against Major of "only $300". But the fact is that he unlawfully denied Major at least $300,000 flowing from his prevailing on the Boeing claim alone, not to mention the even more substantial awards which would have flowed

had not Judge Brett suppressed the facts of the Conspiracy and other causes. This no doubt is what the appeals court meant in praising Judge Brett's "tempered condemnation" and "tolerant but firm professionalism".

V.

REASONS FOR GRANTING THE WRIT

This is a case in which three lawyers, in conspiring with a small claims judge to obstruct the justice of a citizen pro se's scheduled hearing, acted in the arrogant and cynical conviction that all they had to do was corrupt that first judge, and every judge following would be more eager to cover up the wrongdoing of his colleagues than to grant the citizen an unbiased hearing, much less to administer justice.

The citizen was denied any hearing or appeal in state court. The federal judge in Tacoma, WA sent the case to Tulsa, OK on the basis

of the convenience of nonexistent witnesses. The Tulsa judge required the citizen to fly 1,500 miles for a nonexistent hearing to be told his case had not been read and the only papers worth considering were the defendant's motion to dismiss and counterclaim, improperly filed, illegally transferred, twice defaulted in state court and never filed in federal court. The appeals court called this judge's behavior "exemplary".

This Court is truly the court of last resort for a case in which the facts have never been allowed to surface in an impartial hearing, for the simple reason that first one, and then several judges would be implicated in wrongdoing.

It is for this Court to determine whether the XIV Amendment means the American system of justice is to be subjected to the rule of law or money.

DATED THIS 10th day of April, 1989

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88-1811

Supreme Court, U.S.
FILED
MAY 8 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

MICHAEL J. MAJOR - PETITIONER

vs.

PENNWELL PUBLISHING COMPANY - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MICHAEL J. MAJOR,	(stamped filed 3/10/89)
Plaintiff-Appellant,	No. 87-2267
v	(D.C. No. 86-C-1083-B)
PENNWELL PUBLISHING COMPANY,	(N.D. Okla.)
Defendant-Appellee	

ORDER AND JUDGMENT*

Before ANDERSON and TACHA, Circuit Judges and ROGERS, District Judge.**

**The Honorable Richard D. Rogers, United States District Judge for the District of Kansas, sitting by designation.)

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Plaintiff appeals from a predominantly adverse judgment entered by the district

court following a bench trial of the two claims -- breach of contract and intentional infliction of emotional distress -- remaining after pretrial rulings had disposed of several associated causes of action asserted in this diversity contract and tort suit.

We have carefully reviewed the record, considered all of plaintiff's arguments in light thereof, and conclude that the district court's disposition was correct. We affirm the several rulings challenged on this appeal for substantially the reasons stated in the pertinent orders of the district court. In addition, we believe it important to commend the district court on its tempered condemnation of plaintiff's often abuse personal attacks on the presiding judge and others involved in this litigation. The tolerant but firm professionalism exhibited by the district court in this case was a exemplary as plaintiff's conduct was inappropriate.

The judgment entered by the United States District Court for the Northern District of Oklahoma is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

*This order and judgment has no precedial value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

IN THE UNTED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL J. MAJOR, Plaintiff, v. PENNWELL PUBLISHING COMPANY Defendant.	(stamped filed 8/20/87) No. 86-C-1083-B

JUDGEMENT

In accordance with the Finds of Fact and Conclusions of Law entered the 20th day of August, 1989, the Court enters judgment in favor of the Plaintiff, Michael J. Major, and against the Defendant, PennWell Publishing Company, on the breach of contract claim in the amount of Eight hundred Twenty and 83/100 dollars ($820.83), plus pre-judgment interest at the rate of 6% per annum from the date of February 1, 1986 to the date of judgment, which is $897.07, and post-judgment interest at the rate of 6.98% per annum from this date on the total sum of $897.07. Judgment is hereby entered in favor of the Defendant

PennWell Publishing Company, and against the Plaintiff, Michael J. Major, on Plaintiff's claim of intentional infliction of emotional distress. The parties are to pay their own respective court costs and attorneys fees. (Plaintiff appears pro se).

DATED this 20th day of August, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE DISTRICT COURT OF OKLAHOMA IN AND FOR TULSA COUNTY

MICHAEL J. MAJOR,	)(stamped filed
	)6/23/86
Plaintiff,	)crossed out &
	)then stamped
v.	)filed 6/27/87)
	)
PENNWELL PUBLISHING COMPANY,	)No. SC 86-9317
	)No. CJ 86-4182
Defendant.	)
	)

ORDER OF TRANSFER

Now on this 23rd day of June, 1986, the court having heard the Defendant's Motion to Transfer, as permitted in 12 Oklahoma Statues, Section 1757, finds the Motion to Transfer is proper and orders this case transferred to Civil Docket.

IT IS HEREBY ORDERED that this case be and the same is hereby transferred from the Small Claims Docket to the Civil Docket of this Court. The Plaintiff has twenty days from this date to file a petition that conforms to the standards of the pleadings prescribed in the Oklahoma Pleading Code. The answer of the defendant shall be due

within 20 days after the filing of the petition and the reply of the Plaintiff in ten days after that answer is filed. If the Plaintiff ultimately prevails in the action so transferred by the Defendant, a reasonable attorney's fee shall be allowed to Plaintiff's attorney to be taxed as costs in the case.

JUDGE JAMES H. GRIFFIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL J. MAJOR,	(stamped filed 9/10/86)
Petitioner,	
v.	No. C86-953R
PENNWELL PUBLISHING COMPANY,	
Respondent	

ORDER GRANTING RESPONDENT'S
MOTION TO REMAND

THIS MATTER comes before the court on a motion by respondent PennWell Publishing Co-pany for an order remanding this action to the District Court of Tulsa County, State of Oklahoma and for its costs and attorneys' fees incurred in presenting this motion. The court has reviewed the documents submitted in support of and in opposition to the motion to-gether with the relevant files and records herein. Being fully advised, the court finds and rules as follows:

Petitioner's attempt to remove this case pursuant to 28 U.S.C. §1441(a) is patently

without merit. Petitioner is not a defendant within the meaning of that statute. Furthermore, even if he were, the Western District of Washington would not be the appropriate place to which to remove the case. Respondent's motion to remand is accordingly granted.

However, the court declines to impose sanctions on petitioner. Although his removal lacked any legal support, the court recognizes that he is a pro se litigant and not well-versed in the law. The court is, therefore, unable to conclude at this juncture that petitioner filed his petition in bad faith.

Finally, the court also notes that it has reviewed petitioner's allegations of attorney misconduct and finds no basis whatsoever for the conclusions which he draws from the described circumstances of his case. It would behoove petitioner to temper his rhetoric in light of the lack of any support

for his contentions.

Respondent's motion to remand is hereby GRANTED.

The Clerk of the Court is directed to forward copies of this Order to counsel of record.

DATED at Seattle, Washington this 9th day of September, 1986.

BARBARA A. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL J. MAJOR, Plaintiff, v. PENNWELL PUBLISHING COMPANY, Defendant.	(stamped filed 11/21/86) No. C86-795TB

ORDER OF TRANSFER TO THE NORTHERN DISTRICT OF OKLAHOMA

THIS MATTER comes before the court on Defendant PennWell's Motion for an Order Transferring this Cause of Action to the Northern District of Oklahoma. The Court has reviewed the Motion, the memoranda submitted by counsel for the Defendant PennWell, the memoranda submitted by Michael J. Major, and the records and files herein, and rules as follows:

Under 28 U.S.C. 1404(a) the Court has authority to transfer a cause of action to any other district where it might have been brought originally for the convenience of parties and witnesses and where such transfer serves the

interest of justice. The plaintiff has filed this cause of-action in theWestern District of Washington alleging jurisdiction based on diversity of citizenship. In civil actions based on diversity, an action may be brought only in the judicial district where all the plaintiffs or all the defendants reside or in which the claim arose. 28 U.S.C. 1391(a). The plaintiff has alleged that he is a citizen of the State of Washington. The Defendant PennWell Publishing Company is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma. The Defendant Didstrict Court of Tulsa County of the State of Oklahoma initially named in the plaintiff's second and third causes of action has its principal place of business in Tulsa County, Oklahoma[1].

1. The plaintiff gave notice of voluntary dismissal of the District court of Tulsa County of the State of Oklahoma on November 10, 1986.

The cause of action arose out of a contract between the Plaintiff and the Defendant Penn-Well Publishing Company and out of an action for breach of contract involving the above-named defendants as well as the court of Tulsa County. The weight of the contacts of the parties to this action is in the Northern District of Oklahoma. This cause of action could have been brought in the Federal District Court for the Northern District of Oklahoma originally.

The transfer of this cause of action to the Northern District of Oklahoma will serve the convenience of witnesses. The Defendant PennWell's employees involved in this transaction reside in Oklahoma and in the immediate vicinity. Various personnel of the Tulsa County Court located in Tulsa, Oklahoma, are named witnesses. All of the named witnesses except for the plaintiff reside in the Northern District of Oklahoma. If trial of this matter is transferred

to the Northern District of Oklahama, counsel will have ready access to proof and the availability of compulsory process.

If a case based on diversity of citizenship, consideration should be given to judicial familiarity with a governing state law. In this case, at least the second and third cause of action will be determined by Oklahoma law. Further, the District Court for the Northern District of Oklahoma is in the best position to determine the appropriate forum for plaintiff's first cause of action. Therefore, it will serve the interest of judicial economy and the interest of justice to transfer this cause of action to the Northern District of Oklahoma. Based on the foregoing opinion, it is hereby

ORDERED the Defendant PennWell Publishing Company's Motion for Transfer of this Cause of Action to the Northern District of Oklahoma is hereby GRANTED. It is further

ORDERED this cause of action is transferred

to the Northern District of Oklahoma. It is further

ORDERED the Clerk of this Court shall forward all documents filed under Cause Number C86-795TB to the Clerk of the Court for the Northern District of Oklahoma.

The Clerk of this Court is instructed to send uncertified copies of this Order to all counsel of record and to the Plaintiff Michael J. Major.

DATED this 20th day of November, 1986.

ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL J. MAJOR Plaintiff, v. PENNWELL PUBLISHING COMPANY, Defendant.	(stamped filed 3/24/87) No. 86-C-1083-B

ORDER

This matter comes before the Court after a stauts conference and hearing on pretrial motions held March 19, 1987. The Court, after reviewing the status of the case and various filings now at issue, ordered the following:

The plaintiff's motion to amend his complaint to include claims for larceny and libel filed December 24, 1986, is hereby denied. The Court finds that the proposed amendments to the complaint to not state a viable claim and could not withstand a motion to dismiss by the defendant. The Court will not freely allow the amendment under Fed.R.Civ.P. 15 if the

amended pleading could be defeated by a motion for summary judgment or a motion to dismiss. Collyard v. Washington Capitals, 477 F Supp. 1247, 1249 (D.C.Minn. 1979).

The Court finds that the "larceny claim" sought to be added by the plaintiff merely arises out of the breach of contract claim already asserted by the plaintiff in his complaint. The Court finds that the plaintiff's larcheny claim fails to state a new claim upon which relief can be granted.

Likewise, plaintiff's libel claim is without merit and based upon an alleged statement made by an attorney for the defendant during the Washington federal court proceedings.

Plaintiff also contends that the defendant's answer and counterclaim filed in the Small Claims action in Tulsa County District Court is libelous. The Court is unpersuaded and finds no basis for the libel claim arising of the judicial proceedings in this case.

Therefore, the plaintiff's motion to amend his complaint is denied.

Furhter, the Court, after reviewing the repetitious and voluminous pleadings hereby orders the pro se plaintiff to secure the Court's written approval before any subsequent filings will be allowed in this case. In addition, the Court directs the plaintiff's attention to Fed.R.Civ.P. 11 which outlines the standard of conduct expected of persons who sign pleadings and motions for filing in a federal case. The plaintiff is encouraged to become familiar with Rule 11 and its requirements.

IT IS SO ORDERED this 24th day of March, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL J. MAJOR,	)	(stamped filed 4/21/87)
Plaintiff,	)	
v.	)	No. 86-C-1083-B
PENNWELL PUBLISHING COMPANY,	)	
Defendant.	)	

ORDER

This matter comes before the court on various pretrial motions filed by the parties. The court has reviewed the file, the legal arguments and authorities provided by the parties, and enteres the following order on the pending motions:

MOTION TO ADJUDGE PENNWELL GUILTY OF CONTEMPT

In the course of this litigation the plaintiff has filed twelve motions to adjudge PennWell Publishing Company ("PennWell") guilt of contempt and order PennWell to pay reasonable expenses and attorney's fees. In support of his motions, the plaintiff contends that objections and

motions filed by the defendant were submitted in bad faith for improper purposes, namely, to harass, to increase the cost of litigation, to libel the plaintiff, to deliberately misrepresent the facts with intent to deceive the court, all for the sole intent of delaying or obstructing justice. The court finds that none of the motions or objections referred to by the plaintiff in his motions were submitted in bad faith by the defendant and finds that the twelve motions to adjudge PennWell guilty of contempt are frivolous and a needless waste of scarce judicial resources. Therefore, the plaintiff's twelve separate motions to adjust PennWell guilty of contempt are overruled.

MOTIONS TO ADJUDGE PENNWELL EXECUTIVES GUILTY OF PERJURY AND TO ORDER PENNWELL TO PAY THE PLAINTIFF ALL EXPENSES, ATTORNEY'S FEES AND AWARDS STEMMING FROM THAT PERJURY

The plaintiff asserts that PennWell executives, Joseph A. Wolking, V. John Maney, Bruce D. Campbell and Robert Holton were guilty of perjury and contempt. In support

of those motions the plaintiff contends that affidavits filed by said executives were submitted in violation of the dictates of Fed. R.Civ.P. 11 and therefore constitute perjury. The court finds that these motions are but a further attempt by the plaintiff to show that the defendant's defense tactics in this litigation have been advanced in bad faith. The court finds the motions to adjudge various officers of PennWell guilty of perjury frivolous and overrules plaintiff's motions.

MOTIONS TO ADJUDGE VARIOUS PENNWELL ATTORNEYS GUILTY OF PERJURY AND CONTEMPT AND MOTION TO DISBAR THE PENNWELL ATTORNEYS

In support of his motions against the various attorneys, the plaintiff asserts that each has consciously and willfully flouted the oath of attorney required to practice in this court as well as Fed.R.Civ.P. 56(g) and Rule 11. The plaintiff alleges the violations by the attorneys stem from the removal of the original claim from Small Claims Court and the filing of a $300,000.00 counterclaim on the

defendant's behalf. The court finds the plaintiff's emotionally charged allegations of misconduct to be without merit and orders that plaintiff's motion to disbar PennWell's lawyers and the various motions to adjudge PennWell's lawyers guilty of perjury and contempt are overruled.

DEFENDANT PENNWELL PUBLISHING COMPANY'S MOTION FOR SANCTIONS

Defendant PennWell seeks snactions against the plaintiff for the multitude of pleadings filed by the plaintiff and the allegations of misconduct leveled at the defendant, its employees and attorneys. The court finds that in view of its disposition of the plaintiff's various filings and the court's admonition to the plaintiff regarding federal rule 11 at the March 19, 1987 status conference, that the defendant's motions for sanctions will be held in abeyance to be given further consideration if plaintiff's conduct persists in violation of Fed.R.Civ.P. 11.

DEFENDANT PENNWELL'S MOTION TO DISMISS

Defendant PennWell filed a motion to dismiss in the United States District Court for the Western District of Washington at Tacoma on November 4, 1986. The case was transferred from the District Court of Washington to this court and the defendant resubmitted its motion to dismiss on December 24, 1986, incorporating the argument of the original motion. The defendant's motion was directed at the second and third causes of action in the plaintiff's complaint. Defendant contends that Major's second and third causes of action fail to state a claim upon which relief can be granted and should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

The plaintiff's second cause of action is entitled Conspiracy to Deny Payment on on Defaulted Claim. Plaintiff's complaint alleges that the order of Judge Griffin transferring the action to the civil docket of Tulsa County District Court was

improper due to a conspiracy between the defendant and the judges involved. The plaintiff alleges that he was entitled to a default judgment in the Small Claims Court and therefore the transfer of the action from the Small Claims Division to the civil docket constitutes a conspiracy between Judge Wiseman, who allowed the transfer, and the defendant. The Court finds that the plaintiff's second cause of action is so lacking in factual allegations and proof that it must be dismissed pursuant to Fed. R.Civ.P. 12(b)(6) for failure to state a claim upon which relief could be granted. Any impropriety of the transfer procedure in state court should be addressed on appeal by the state judiciary and the court finds that plaintiff has wholly failed to state a claim of conspiracy in his complaint.

The plaintiff's third cause of action alleges a cause of action for infliction of emotional distress. Under Oklahoma law, to

to state a claim for intentional infliction emotional distress the plaintiff must show such conduct that is "so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community." Restatement (Second) of Torts § 46 (1977); Breeden v. League Services Corp., 575 P.2d 1373, 1376 (ok. 1978). As a basis for his intentional infliction of emotional distress claim, the plaintiff states that defendant's actions in terminating the contract, filing its answer and counterclaim in the Small Claims action, Judge Griffin's order in transferring the case to the civil docket, and PennWell's motion to remand the case from the United States District Court for the Western District of Washington constitute conduct which would support a claim for intentional infliction of emotional distress. In response to

defendant's motion to dismiss the third cause of action, the plaintiff advances the following allegation of his complaint as sufficient to withstand the motion to dismiss:

> "That PennWell and the Tulsa court should be attempting to destroy a man and his family financially, emotionall, and spiritually for no other reason than he attempted to bring a case to Small Claims Court is an order of immorality so extreme it represents a gross offense to human decency and a violation of basic human dignity. That PennWell and the Tulsa court should be attempting to accomplish this nefarious goal trhough a corruption in the profession of law and the system of justice means that they have not simply gone beyond the boundaries of civilized society; they have destroyed those boundaries from within.
>
> "The ongoing pattern of irrationality, lawlessness, and violence perpetuated by PennWell and the Tulsa court amount to not only outrage, but also a pure, unadulterated and unmitigated evil." (Major Complaint, page 181)

To prevail on a motion to dismiss for failure to state a claim upon which relief can be granted, defendant must establish the plaintiff can prove no set of facts in support of his claim that would entitle the

plaintiff to relief. Haines v. Kerner, 404 U. S. 519 (19720); Jorgensen v. Meade Johnson Laboratories, Inc., 483 F.2d 237 (10th Cir. 1973). All factual allegations should be construed to the pleader. Gardner v. Toilet Goods Assn. 387 U.S. 167 (1967); Lee v. Derry-berry, 466 F.Supp. 30 (W.D. Okla. 1978); and Halliburton Oil Producing Co. v. Aetna Ins. Co., 491 F.Supp. 595 (W.D.Okla. 1978).

The court's review of the plaintiff's claim for intentional infliction of emotional distress reveals a lack of factual allegations which would support the tort claim. However, the court feels that under the standard previously articulated, Haines v. Kerner, supra, dismissal of the plaintiff's claim would be premature. While the court has considerable doubt the plaintiff would be entitled to recovery for the vaguely pled claim for intentional infliction of emotional distress, dismissal at this juncture is not proper under the liberal pleading format of the

Federal Rules of Civil Procedure. The court will, of course, entertain a motion for summary judgement on this issue at a later date supported by the evidence of the actual facts regarding plaintiff's termination. The defendant's motion to dismiss for failure to state a claim on the intentional infliction of emotional distress claim is hereby overruled.

1) MOTION TO ENTER DEFAULT JUDGMENT AGAINST DEFENDANT PENNWELL PUBLISHING COMPANY; 2) MOTION TO DECLARE A DEFAULT JUDGMENT AGAINST DEFENDANT'S FAILURE TO PROPERLY RESPOND TO PLAINTIFF'S MOTION TO ENTER DEFAULT, SUMMARY AND OTHER JUDGMENTS AGAINST DEFENDANT; 3) MOTION TO ADJUDICATE THIS CASE AND BRING IT TO A CLOSE 4) SUP PLEMENTAL MOTION TO ENTER DEFAULT, SUMMARY AND OTHER JUDGMENTS AGAINST PENNWELL; 5) MOTION TO ENTER ALL OF THE JUDGMENTS AG-AINST DEFENDANT FOR DEFENDANT'S FAILURE TO RESPOND PROPERLY TO SUPPLEMENTAL MOTION TO ENTER DEFAULT, SUMMARY AND OTHER JUDG-MENTS AGAINST PENNWELL

By the above cited motions the plaintiff seeks to supplement his original summary judment motions of December 22, 1986, and urges the court to enter judgment by default for failure of the defendant to respond in

timely fashion pursuant to Local Rule 14(a). The court finds the plaintiff's various motions in supplement to his original motion for summary judgment are without merit and overrules such motions. In the interest of justice the court will consider all of the filings of the plaintiff and defendant heretofore in deciding plaintiff's summary judment motion.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff filed his motion for summary judment on December 24, 1986, and sought judment on five causes of action. In light of the instant order and previous rulings by the court, the only remaining causes of action are the plaintiff's breach of contract claim and the intentional infliction of emotional distress claim. Therefore, the court will evaluate the plaintiff's motion for summary judgment only as to the remaining two courts of the complaint.

Summary judgment must be denied if a genuine issue of material fact is presented to the trial court. Exnicious v. United States, 563 F.2d 418, 425 (10th Cir. 1977). In making this determination, the court must view the evidence in the light most favorable to the party against whom judgment is sought. National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778, 784 (10th Cir. 1977). Factual inferences tending to show triable issues must be resolved in favor of the existence of those issues. Luckett v. Bethlehem Steel Corp. 618 F.2d 1373, 1377 (10th Cir. 1980). The party moving for summary judgment has the burden of showing that there is no genuine issue of fact regarding the legal dispute, but the party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials contained in his pleading. The non-movant must set forth specific facts with supporting material showing that there is a genuine issue

for trial. Celotex Corporation v. Catrett, 477 U.S. ___, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Anderson v. Liberty Lobby, Inc.,477 U.S. ___, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. F.D.I.C., 805 F.2d 342 (10th Cir. 1986).

Plaintiff's memorandum in support of his motion for summary judgment does not contain a statement of uncontroverted facts showing that no genuine issue of material fact remains which entitles him to relief. Clearly, there are numerous issues of fact remaining on the breach of contract issue. The affidavit of Robert Holton attached to defendant's response brief sets out that plaintiff breached the contract by producing work of unacceptable and unpublishable quality and by failing to make corrections as necessary. (See Affidavit, paragraphs 5,6,8, 10 and 11). Furhter, the defendant controverts the plaintiff's claim that his work met the highest editorial standards as guaranteed

by the contract provisions. (See Affidavit 5,6, and 8). The court finds that the plaintiff has not met his burden of showing that there is no genuine issue of fact regarding the contract dispute and therefore the motion for summary judgment is overruled.

The plaintiff's motion for summary judgment on the intentional infliction of emotional distress claim must also fail. In his motion for summary judment the plaintiff wholly fails to state uncontroverted facts which would merit judgment on this cause of action as required by Local Rule 14 of this court. In fact, the plaintiff's synopsis of his third cause of actions shows that summary judgment is not approrpriate. "This cause of action is based upon and validated by the objective foundation of the other causes, and rises from that foundation, which demonstrates that PennWell willfully intended to inflict that emotional distress. The experience of this distress is subjec-

tive. The only person who can bear witness to this cause of action is Major. He has borne witness to this emotional distress in his complaint." (See Memorandum in Support of Motion for Summary Judgment, pg. 40).

Viewing the evidence presented in the light most favorable to the party against whom the judgment is sought, the court finds that summary judgment ca-not be granted and hereby overrules the plaintiff's motion for summary judgment on his first and third causes of action.

The parties are ordered to adhere to the following schedule:

1. The defendant is directed to file its answer to the remaining counts of the complaint by April 30, 1987.

2. The parties are to exchange the names and addresses of all witnesses, in writing, along with a brief statement re each witness' expected testimony (not necessary if witness' deposition taken) by June 12,

1987.

3. The parties are granted until June 26, 1987, in which to complete discovery.

4. Final pretrial conference will be held on July 6, 1987, at 3:30 p.m.

5. The parties are to exchange exhibits and file an agreed pretrial order by July 9, 1987;

6. The parties are to file any trial briefs, requested voir dire and requested instructions on or before July 13, 1987;

7. The case is set for jury trial on July 20, 1987, at 9:30 a.m.

IT IS SO ORDERED this 21st day of April, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL J. MAJOR,	(stamped filed 6/3/87)
Plaintiff,	
v.	No. 86-C-1083-B
PENNWELL PUBLISHING COMPANY,	
Defendant.	

ORDER
DESIGNATING UNITED STATES MAGISTRATE
TO HEAR CERTAIN DISCOVERY MATTERS

Upon the Application of the Defendant, Penn-Well Publishing Company, and for good cause shown, the Court hereby orders and designates that the United States Magistrate shall hear and determine any matters which may arise during the taking of the deposition of Plaintiff Michael J. Major by the Defendant herein, such deposition to commence on June 16, 1987 at 9:00 a.m. and continue from day to day until completed.

IT IS SO ORDERED this 2nd day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL J. MAJOR,	)	(stamped filed 7/22/87)
Plaintiff,	)	
	)	No. 86-C-1083-B
v.	)	
PENNWELL PUBLISHING COMPANY,	)	
Defendant.	)	

ORDER

This matter comes before the Court on the Plaintiff's Motion to Compel and Motion to Amend Complaint to include violation of the United States copyright laws. Permission to file the motions is granted and both motions are overruled for the reasons set forth below.

Under Fed.R.Civ.P. 15(a), once a responsive pleading to the complaint has been filed, the party may amend his complaint only by leave of the court. Leave is to be freely given "when justice so requires." However, the decision whether to grant leave to amend is clearly discretionary with the court. Zenith Radio Corp. v. Hazeltine Research, Inc.

401 U.S. 321, 330 (1971).

This is an action for breach of contract and intentional infliction of emotional distress. The Plaintiff alleges that he entered into a contract with the Defendant to write certain articles for Defendant's publication and that the Defendant breached its obligations under the contract and inflicted emotional distress in breaching the contract. Plaintiff now seeks to amend the complaint to include a violation of the United States copyright laws alleging that the Defendant's publication, Computer Graphics World IS publishing an an article in an upcoming issue which allegedly emanated from an idea submitted by the Plaintiff to the Defendant in 1985.

The Court finds the profered amendment to the complaint substantially unrelated to the instant action and prospective in nature in that it alleges a violation of copyright laws that will occur sometime in August, 1987.

The Court notes that the parties in this case have completed discovery, filed all dispositive motions, Proposed Findings of Fact and Conclusions of Law, and a joint Pretrial Order. The Plaintiff's attempted amendment of a matter unrelated to the breach of contract claim some ten days before the July 27, 1987 trial date is untimely. The Court in its discretion concludes that justice would not be served by granting the Plaintiff's application and the Defendant would be greatly prejudiced by the requested amendment at this late date. In light of the denial of the motion to amend, the Court finds that Plaintiff's companion motion to compel certain documents related to the proposed copyright claim is moot and denies this motion to compel.

IT IS THEREFORE ORDERED Plaintiff's Motion to Amend Complaint and Motion to Compel are hereby denied.

ENTERED this 22nd day of July, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL J. MAJOR,	(stamped filed 8/20/87)
Plaintiff,	
v.	No. 86-C-1083-B
PENNWELL PUBLISHING COMPANY,	
Defendant.	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case was tried to the Court sitting without a jury on July 27 and 28, 1987. The Plaintiff appears pro se and Defendant appears with counsel of record. Having considered all of the evidence, the arguments of counsel, and the applicable legal authorities, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Plaintiff, Michael J. Major ("Major"), is a resident of the State of Washington.

2. The Defendant, PennWell Publishing Company ("PennWell"), is an Oklahoma corporation with its main offices located in Tulsa, OK.

3. PennWell owns and publishes a magazine known as Computer Graphics World ("CGW"), which is based in Littleton, Massachusetts.

4. On October 15, 1985, Major and David Pope ("Pope"), editor of CGW, entered into a written agreement (the "Contract") (Plff. Ex. 6), which provided that Major would write and sell to CGW the publication rights to six articles, to be written about the use of computer graphics by six different companies, in exchange for the sum of $800 for each article plus normal expenses. Major had previously written articles on other subjects for the Defendant which were acceptable to Pope. The articles herein involved industry technical writing as distinguished from reporting on news events.

5. In the contract, Major "guaranteed to CGW that Major's work would meet the highest editorial standards, that, if the Editor finds the work in any way unsatisfactory, the Author will make all the necessary corrections for

no added charge."

6. The highest editorial standars referred to in the contract are the editor's reasonable subjective standards for the particular publication.

7. The Computer Graphics World articles that were the subject of the agreement were to be written and provided on the following schedule:

(1) Boeing Computer Services ("Boeing article") due December 1, 1985;

(2) Marathon Oil Company ("Maraton article") due January 10, 1986;

(3) Martin-Marietta Energy Systems, Inc. ("Martin-Marietta article") due February 1, 1986;

(4) Radian article due March 1, 1986;

(5) Shepherd article due April 1, 1986;

(6) Babcock article due May 1, 1986.

8. In order to secure information and interviews from Marathon Oil Company ("Marathon") necessary to write the Marathon article, Major agreed with David Millard ("Millard"), a Marathon employee, that Major would submit the article

when written to Marathon for Marathon's review and that Major would make changes to the article to correct technical and content accuracy determined by Marathon.

9. Pursuant to the understanding, on November 16, 1985, Major sent a draft of the Marahon article to Millard at Marathon for his review.

10. On November 21, 1985, Millard called Major on the telephone to discuss the changes to the article which Millard felt were necessary to correct certain inaccuracies in the article. Major refused to discuss the matter beyond telling Millard to send in any corrections, was verbally abusive, cursed and hung up on Millard.[1]

[1]"Major misconceived Millard's suggestions for changes in the Marathon article as censorship, thereby implicating a First Amendment free speech issue. Major's conclusions in this regard were erroneous because Millard's concerns dealt essentially with article content, accuracy and misquotes. Major became indigant and told Millard to "go fuck himself" and hung up.

11. On November 21, 1985, Millard of

Marathon called CGW and spoke with Jenifer Wight ("Wight"), a CGW employee. Millard told Wight that Major refused to honor his agreement with Marathon to allow Marathon to review and require changes in the article, because many portions of the article contained errors of fact, and that Marathon might sue Major if the article was published without the corrections requested by Marathon. Millard further told Wight that Major had been verbally abusive, unprofessional, and hand hung up on Millard.

12. Millard indicated to Wight that Millard thought that Major was either an employee of CGW, or speaking with authority of CGW, based upon what Major told him. Wight assured Millard that Major was not a CGW but was a free lance writer.

13. On November 22, 1985, Millard wrote Major stating that the misrepresentations in the article would require a rewrite, and that because of Major's unwillingness to cooperate

with Marathon to create a factually and technically correct article, Marathon and Millard were withdrawing their consent to publication of the article or use of quotes from Millard. Millard also stated in the letter that he had personally advised CGW of such withdrawal of consent. (plff. Ex. 9).

14. With his letter of November 22, 1985, Millard sent to Major a copy of the Marathon article, with certain portions of the article circled in red ink, which Millard stated in his letter indicated some of the areas of inaccuracy of fact or impression which required correction.

15. On November, 1985, Major sent the Boeing article to CGW.

16. Sometime in early December, 1985, Stephen M. Porter ("Porter"), the CGW editor assigned to the Boeing article, wrote Major concerning the changes that needed to be made to the Boeing article. (Plff. Ex. 11). With his letter, Porter sent to Major a copy of the

Boeing article upon which Porter had made notes indicating the changes which were required to be made to the article to make it acceptable. Porter also called Major and discussed the changes which needed to be made to the article.

17. The Boeing article, as originally submitted, contained numerous correctable problems, both of style and content.

18. On December 24, 1985, Major sent to CGW the rewritten Boeing article and the Marathon article.

19. The rewritten Boeing article, as sent to CGW by Major, was still not in publishable form but Porter thought it essentially acceptable, as Porter would make needed corrections himself and so advised Major.

20. Sometime in late December, 1985, or early January, 1986, Tom McMillan ("McMillan"), managing editor of CGW, called Millard at Marathon to confirm the report that McMillan

had received from Wight regarding Millard's problems with Major.

21. Millard confirmed to McMillan that Major would not listen to Marathon's concerns about correcting inaccuracies in the article, was defensive and unprofessional, and hung up on Millard in response to some corrections which Millard had requested. Millard basically recounted the story he had given to Wight, and said there had been no further developments nor any improvement in the situation.

22. On January 14, 1986, a check in the amount of $820.83 was issued to Major from the PennWell office in Tulsa for payment of the Boeing article. (Plff. Ex. 26).

23. On January 16, 1986, McMillan wrote Major stating that CGW was terminating the contract. CGW terminated the contract because the Marathon article was factually inaccurate and not in keeping with the highest editorial standards, and further because

Major's conduct in dealing with the companies about which he was writing was unprofessional and, consequently, reflected poorly on CGW in public relations. Major, due to his inability to communicate with Millard of Marathon, was incapable of making necessary changes to make the Marathon article fit for publication. Major did not advise Porter (PennWell) of Millard's proposed changes in the Marathon article but Millard did.

24. The Marathon article failed to meet the highest editorial standards guaranteed by Major in the contract.

25. On January 21, 1986, Major wrote Pope and threatened to contact all of PennWell's advertisers and other third parties unless Major was paid in full for the Boeing and Marathon articles.

26. On January 25, 1986, Major sent Pope his proposed Martin-Marietta article,

following Major's termination.

27. On January 31, 1986, Betsy Riley ("Riley") of Martin-Marietta called Porter and indicated that the Martin-Marietta article contained misquotes and other inaccuracies.

28. Both Marathon and Martin-Marietta are important companies in the computer graphics industry, and CGW was concerned that its reputation was being damaged by Major's inaccurate writing and unprofessional conduct because Major represented or implied to the companies that he was a CGW writer.

29. On February 3, 1986, Robert Biolchini ("Biolchini") attorney for PennWell, wrote Major and warned him to not libel or defame PennWell when contacting its advertisers.

30. About the first of February, 1986, PennWell successfully placed a stop payment on the $820.83 check it had issued to Major for the Boeing article.

31. PennWell stopped payment on the check because it had been sent to Major before CGW learned from a Boeing employee that the Boeing article also contained factual inaccuracies and also because of the ongoing threats by Major to contact PennWell's advertisers about the dispute.

32. On February 14, 1986, Major wrote Philip C. Lauinger, Jr. ("Lauinger"), president of PennWell, and stated that he would send statements regarding the dispute to all of PennWell's advertisers and other third parties on a bi-weekly basis unless PennWell immediately paid him $4,305.59 under the contract plus $700,000 in damages. In the letter exchange PennWell threatened Major with a potential libel action.

33. In March and April of 1986, Major mailed four "newsletters" to PennWell's advertisers, PennWell's bank, and other third parties which were published by Major for the purpose of damaging PennWell's

business and reputation. (The issue of the libelous character of such "newsletters" is not before this Court.)

34. On April 21, 1986, Major wrote PennWell attorney Biolchini and stated that his "newsletters" had been sent to all of Pennwell's advertisers, its bank, and other third parties.

35. On May 31, 1986, Major wrote Lauinger and stated that Major was going to sue PennWell six times in the Tulsa County small claims court, one for each article under the contract. Major further stated he would "keep up his news coverage" of the dispute , and publish "letters of sympathy" he had received from PennWell advertisers who were "planning to cut back, if not completely eliminate advertising in PennWell's publications." He further stated that he would continue to send statements regarding the dispute to PennWell's advertisers.

36. On June 6, 1986, Major filed suit

against PennWell in the Tulsa County small claims court, seking $1,500.00 damages for PennWell's stop payment on the check sent as payment for his Boeing article.

37. On June 18, 1986, PennWell filed an Answer and a $300,000 previously threatened Counterclaim in the suit brought by Major, wherein PennWell asserted claims for libel and interference with business relationships against Major based upon his "news letters" to PennWell's advertisers and other third parties. PennWell sought actual and punitive damages, as well as injunctive relief against Major.

38. PennWell filed its Answer and Counterclaim purportedly in order to protect itself and recover any damages it suffered as a result of the "newsletters" sent by Major to PennWell's advertisers, bank and others, as well as Major's continuing threats to continue such activity.

39. Major dismissed his Oklahoma state

court small claims action without prejudice and refiled an action in the federal court of the State of Washington which as the instant action was transferred to this court.

40. PennWell's actions with regard to its dispute with Major were undertaken for the purpose of protecting PennWell and its conceived legitimate business interests.

41. None of PennWell's actions, including the termination of the contract, the stop payment of the check and the filing of its Answer and Counterclaim in the state court small claims proceedings, constituted extreme and outrageous conduct under the circumstances of this dispute.

42. PennWell, under the circumstances, was entitled to terminate the agreement with Major as it did on January 16, 1986. Major's own conduct and inability to communicate reasonably with PennWell, Marathon and Martin-Marietta were justification for PennWell's termination. PennWell was not motivated by

bad faith. PennWell did not intend to cause Major severe emotional distress in carrying on and attempting to resolve the dispute herein.

43. Because PennWell accepted the Boeing article, though not ready for final publication, Major is entitled to be paid the sum of $820.83 therefor.

44. Because the Marathon and Martin-Marietta articles did not comport with the highest editorial standards, Major is not entitled to be paid for them.

45. Throughout the litigation Major has in a prolix and imtemperate fashion, and without any factual support, asserted in the pleadings that this court and all other courts involved with this litigation have been bribed by and are in collusion with the Defendant, PennWell. Such claims and conduct are both spurious and frivolous in the context of Rule 11 of the Federal Rules of Civil Procedure. The issue of of appropriate

sanctions will be addressed below.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and parties herein. Venue is proper pursuant to 28 U.S.C. §1391(a) and (c).

2. Any Finding of Fact which might properly be characterized a Conclusion of Law is incorporated herein.

3. PennWell was entitled to terminate the contract with Major because:

A. The contract required that Major submit each article, after having made all necessary corrections, in a condition meeting PennWell's highest editorial standards as a condition precedent to PennWell's acceptance of and payment for the article.

B. Major materially breached the contract by failing to make the necessary corrections to the Marathon article, which failed to meet the highest editorial standards of PennWell for reasons including the

factual inaccuracies contained therein, and by failing to communicate and work in a professional manner with the companies about which he was writing, resulting in significant public relations problems for PennWell;

C. The Martin-Marietta article was submitted after the article had been terminated. The remaining three of the total six articles had not been submitted or written by Major

4. Major's breach of the contract substantially impaired the value of the entire contract, and gave PennWell sufficient grounds to believe that Major was either unwilling or incapable of producing articles of a sufficient quality and in a manner to satisfy the remainder of the contract.

5. In order to prevail upon a claim for intentional infliction of emotional distress, a plaintiff must prove, by a preponderance of the evidence, each of the following ele-

ments.

A. Extreme and outrageous conduct by the Defendant;

B. Defendant engaged in such conduct with the intent to cause Plaintiff severe emotional distress or with a reckless disregard of the possibility of causing Plaintiff severe emotional distress; and

C. Plaintiff suffered severe emotional distress as a result of such conduct of Defendant.

Breeden v. League Services Corp., 575 P.2d 1374, 1376 (Okla. 1978); Eddy v. Brown, 715 P.2d 74, 76 (okla. 1986). Major did not establish a claim under Oklahoma law for intentional infliction of emotional distress.

6. PennWell's motion for dismissal pursuant to Rule 41(b) is granted as to Major's claim for intentional infliction of emotional distress, because Major has failed to present

prima facie evidence to support such claim.

7. Specifically, Major has failed to present evidence of any conduct by PennWell which, under the circumstances, could be found to be extreme and outrageous, and has failed to present any evidence that PennWell's actions were undertaken with the intent ot cause Major emotional distress.

8. The Computer Graphics articles written about Marathon and Martin-Marietta by Major remain his property. The publication rights to the Boeing article are the property of PennWell (Computer Graphics World.)

9. Major is entitled to judgment in the amount of $820.83 pursuant to the contract for the Boeing article plus prejudgment interest from February 1, 1986, to the date of judgment. A separate Judgment contemporaneous with the filing of these Findings of Fact and Conclusions of Law shall be entered.

10. Relative to the sanctions imposed

pursuant to Rule 11 of the Federal Rules of Civil Procedure alluded to in Finding of Fact No. 45:

A. Major shall pay the sum of $300.00 into the Office of the Clerk of the Court. Said sum shall be obtained by the Court by PennWell paying the sum of $820.83, plus prejudgment interest from February 1, 1986 to the date of judgment, and post-judgment interst (as reflected in the accompanying Judgment), into the Office of the Clerk of the Court along with an appropriate release and satisfaction to be signed by the Court. The sanction sum of $300.00 will be withheld by the Clerk and the balance of said judgment will be paid by the Clerk to the Plaintiff, Michael J. Major upon appropriate receipt and release signed by Major. As further sanction, the parties are to pay their

own respective court costs. (The Court has tempered the imposed sanction against Michael J. Major after due and appropriate consideration of his poor financial condition and his demonstrated unfortunate emotional instability herein.)

ENTERED this 20th day of August, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

OK Stat. § 1757. Transfer of actions from small claims docket to another docket

On motion of the defendant the action may, in the discretion of the court, be transferred from the small claims docket to another docket of the court, provided said motion is filed and notice given by the defendant to opposing party by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the sum of Fifty Dollars ($50.00) as the court cost.

The motion shall be heard at the time fixed in the order and consideration shall be given to the hardship on the plaintiff, complexity of the case, reason for transfer, and other relevant matters. If the motion is denied, the action shall remain on the small claims docket. If the motion is granted, the court shall file an order transferring the action from the small

claims docket to another docket, and thereafter the procedure prescribed by Title 28 of the Oklahoma Statutes, Sections 151 to 157, shall prevail as to other costs, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a petition that conforms to the standards of pleadings prescribed by the Oklahoma Pleading Code. The answer of the defendant shall be due within twenty (20) days after the filing of the petition and the reply of the plaintiff in ten (10) days after the answer is filed. If the plaintiff ultimately prevails in the action so transferred by the defenant, a reasonable attorney's fell shall be allowed to plaintiff's attorney to be taxed as costs in the case.

OK Stat. § 1759. Claim, counterclaim, or setoff in excess of One Thousand Five Hundred Dollars

If a claim, a counterclaim, or a setoff is filed for an amount in excess of One Thousand Five Hundred Dollars ($1,500.00), the action shall be transferred to another docket of the disctrict court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim, or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of One Thousand Five Hundred Dollars ($1,500.00) may not be enforced for the part that exceeds One Thousand Five Hundred Dollars ($1,500.00). If the action is transferred to another docket of the district court, the person whose claim exceeded One Thousand Five Hundred Dollars ($1,500.00) shall deposit with the clerk the court costs that are charged in other cases, less any sums

that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

SPEEDY REPLY AND AGREEMENT FORM

(Please check your preference, and, if you wish to make an assignment, sign below. Keep one form for your records and return the second in the enclosed SASE.)

1)	BOEING	YES (x)	NO ( )	DEADLINE:	12/1/85
2)	MARATHON	YES (x)	NO ( )	DEADLINE:	1/10/86
3)	MARIETTA	YES (x)	NO ( )	DEADLINE:	2/1/86
4)	RADIAN	YES (x)	NO ( )	DEADLINE:	3/1/86
5)	SHEPHERD	YES (x)	NO ( )	DEADLINE:	4/1/86
6)	BABCOCK	YES (x)	NO ( )	DEADLINE:	5/1/86

The terms of agreement between the Author, MICHAEL J. MAJOR, and the Publication, COMPUTER GRAPHICS WORLD, for the Author's proposed work, titled - SEE ABOVE - are: a payment of $800 each minimum, plus normal expenses, for the leasing of first North American serial rights for the written work; and, if photos are included, one time editorial use in one issue for the photos;* a response to all communications within 30 days; and the printing of the byline, "Mike Major", beneath the title of the published work. Also, it is understood that the

Author's proposed work will be done on assignment, which means that the Publication will pay the Author, in full, within 30 days of its receipt of the Author's completed work** according to the terms of this agreement, and that the payment will be non-refundable. If, within one year of the Publication's leasing the Author's work, the Publication does not publish this work, then all rights revert to the Author. The Publication also agrees to send the Author three copies of the issue in which his work appears.

"I have read and agree to the above terms."

signed, DAVID POPE, EDITOR
COMPUTER GRAPHICS WORLD 10/18/85

The Author, Michael J. Major, guarantees that his proposed work will meet the highest editorial standards, that, if the Editor finds the work in any way unsatisfactory, the Author will make all the necessary corrections for no added charge. Unless other arrangements

are made, the proposed work will be delivered within three months of the assignment. If the Editor wants the work sooner, the Author will make every effort to comply. He will certify, in writing, the new, agreed-upon deadline. The Author affirms that he has never missed a deadline.

signed, MICHAEL J. MAJOR, PRESIDENT
MAJOR ENTERPRISES 10/7/85

* plus unlimited reprint rights for no added charge -- which means that PennWell may reprint articles & photos for promotional & other uses for no additional payment to the author. ** Payment period of 30 days starts only once Author has made any corrections or rewrites Editor may request.